

SEALED

AT ROANOKE, VA

FILED

UNITED STATES DISTRICT COURT

for the

Western District of Virginia

OCT 18 2016

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

United States of America

v.

DAVID LEE FOX

Case No.

7:16mj-00123

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 2015 until October 22, 2015 in the county of Roanoke in the
Western District of Virginia, the defendant(s) violated:

Code Section

18 USC § 2422(b)

Offense Description

Persuasion, Enducement, Inticement of a Minor to Engage in Sexual Activity

This criminal complaint is based on these facts:

See Attached Affidavit

☒ Continued on the attached sheet.

Complainant's signature

CHRISTOPHER CUMMINGS / SPECIAL AGENT

Printed name and title

Sworn to before me and signed in my presence.

Date:

Oct. 18, 2016

Judge's signature

City and state:

ROANOKE, VIRGINIA

HON. ROBERT S. BALLOU

Printed name and title

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IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

OCT 18 2016

JULIA S. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA)

v.)

DAVID LEE FOX,)

Defendant)

Case No. 7:16-mj-123

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Christopher M. Cummings, being duly sworn, depose and state:

1. Your affiant, Christopher M. Cummings, is a Special Agent with Homeland Security Investigations ("HSI"), currently assigned to Roanoke, Virginia. Your affiant investigates crimes relating to the sexual exploitation of children. Your affiant has been an agent since 2003 and has basic, advanced, and on-the-job training in this investigative area. Your affiant is an HSI representative to the Southern Virginia Internet Crimes Against Children ("ICAC") Task Force. Your affiant has led and participated in the execution of numerous search and arrest warrants related to child exploitation, firearms and narcotics violations, money laundering, and fraud, and is familiar with the federal procedure involved in the execution of federal search and arrest warrants. Your affiant is a graduate of the Federal Law Enforcement Training Center's Criminal Investigator Training Program, the HSI Special Agent Training program, and the ICAC Task Force Basic On-Line Investigative Techniques Course. Your affiant is responsible for enforcing

[Handwritten signature]
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federal criminal statutes involving the sexual exploitation of children including Title 18, United States Code, Section 2422(b).

2. The statements contained in this Affidavit are based on the affiant's experience and background as a special agent working in the area of child exploitation and on information provided by other law enforcement agents. The affiant has not set forth every fact resulting from the investigation; rather this Affidavit sets forth a summary of the investigation to date to establish probable cause to charge David Lee FOX ("FOX") of Rocky Mount, Virginia, with violating Title 18, United States Code Section 2422(b).

3. For the reasons set forth below, your affiant contends that this Affidavit contains ample probable cause to believe that FOX attempted to persuade, induce, entice, or coerce an individual who has not attained the age of eighteen years to engage in any sexual activity for which he can be charged with a criminal offense, including, but not limited to Va. Code § 18.2-63 (unlawful carnal knowledge of a child between the ages of 13 and 15 years old) and Va. Code § 18.2-370 (Taking Indecent Liberties with Children).

DETAILS OF INVESTIGATION

(Minor Victim A)

4. In January 2016, ICAC Investigator Nick Shockley advised your affiant of details regarding David Lee FOX's sexual exploitation of a minor. Investigator Shockley stated that on September 31, 2015, he was contacted by the mother of a fourteen-year-old girl regarding suspicious Facebook messages that her juvenile daughter (to be referred to as Victim A) had received from an account believed to belong to a man named David Lee FOX. Victim A's mother advised Investigator Shockley that FOX was known to the family. Investigator Shockley was familiar with FOX and confirmed that they were

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speaking of the same person. Victim A's mother gave Investigator Shockley permission to utilize Victim A's Facebook account in an undercover capacity.

5. Investigator Shockley and your affiant reviewed Facebook and text messages that FOX had sent to Victim A. On a number of occasions, Investigator Shockley chatted with FOX while assuming Victim A's identity. FOX asked Victim A to text with him on phone number 540-493-0797, a number associated with FOX. On October 22, 2015, FOX texted Victim A, that his "dick is 9 inches" and that he wanted to "kiss her nipples" and asked how many fingers he could put in her "pussy." He continued to tell her that he wanted to perform cunnilingus on her and asked if he could have anal sex with her if he was gentle. FOX asked Victim A to send him a picture of her in a bra. FOX additionally asked if Victim A remembered "feeling his dick" when they were playing at the lake approximately ten years earlier. Investigator Shockley confirmed with Victim A's mother that FOX had gone with the family to the lake about ten years ago. FOX then asked if Victim A could meet him somewhere in person. Specifically, Fox texted: (1) "I want to play with you"; (2) "Tell me what you want me to do to u"; (3) "you want me to put my tongue in you"; (4) "If I am gentle can I put it in your ass"; (5) "Would you suck me till I cum"; (6) "I don't want to get in trouble u r very young and pretty"; and (7) "Can you wear shorts." FOX and the investigator, posing as Victim A, agreed to meet at Franklin Heights Baptist Church, located in the Western District of Virginia, on October 22, 2015, at around 4:00 p.m. FOX drove to the church where he expected to meet Victim A, but was instead met and arrested by Investigator Shockley and the Virginia State Police for solicitation of a minor to commit sex acts.

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(Minor Victim B)

6. On October 2, 2015, the Roanoke County Police contacted Investigator Shockley regarding another juvenile female who had received suspicious messages from David Lee FOX. The juvenile in this instance (to be referred to as Victim B) is friends with Victim A. Victim B's parents gave Investigator Shockley permission to assume Victim B's identity on Facebook as well.

7. Investigator Shockley began chatting with FOX while using Victim B's identity. Investigator Shockley told FOX that he was fourteen years old. FOX initiated and engaged in sexual conversation with who he believed to be Victim B. He asked Victim B to pretend that he was with her and described sexual acts he wanted to do with Victim B, including oral sex, digital penetration of her anus and vagina, and sexual intercourse. FOX then told her he wanted to see her naked and asked her to send him a picture of her nude body. FOX asked Victim B to meet him so that he could perform sexual acts with her and even arranged a time and place for them to meet. FOX called off the meeting at the last minute and stated to Victim B that he was afraid of getting in trouble and going to jail. Investigator Shockley told FOX on numerous occasions that he was fourteen years old and in ninth grade. FOX acknowledged several times that he was nervous about getting in trouble as Victim B was so young. On one occasion, FOX stated that he had previously had sexual relations with a twelve-year-old girl. Over several chats, on multiple dates, FOX continued to try to convince Victim B to meet with him and commit sexual acts. FOX also repeatedly asked Victim B to send sexually explicit pictures of herself to him. On two occasions, FOX sent to Victim B photos of an erect penis which FOX represented was his genitalia.

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8. Subsequent to FOX's arrest, Investigator Schockley obtained a search warrant for FOX's Facebook account. The search produced over 43,000 pages of Facebook material. Investigator Schockley and the affiant reviewed this material and discovered numerous Facebook messages in which FOX engaged in lewd sexual conversation with female minors all over the United States and solicited nude photographs. FOX has sent nude photographs of himself and has received nude photographs from several minors via Facebook.

CONCLUSION

9. Under the Code of Virginia, § 18.2-63, it is unlawful to have carnal knowledge of a child between the ages of 13 and 15 years of age.

10. Under the Code of Virginia, § 18.2-370, it is unlawful to take indecent liberties with children

11. Based on the above information, there is probable cause to believe that Title 18, United States Code, Section 2422(b), which makes it a federal crime for any person to knowingly persuade, induce, entice or coerce any individual who is not yet eighteen years of age to engage in any sexual activity for which any person can be charged with a criminal offense, was violated by David Lee FOX.

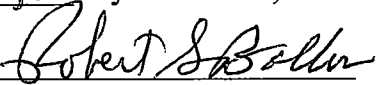
Respectfully submitted,



Christopher M. Cummings
Special Agent
Homeland Security Investigations

Handwritten: RJS
10/18/2016

Sworn and subscribed to before me
this 18th day of October, 2016


The Honorable Robert S. Ballou
United States Magistrate Judge